[Dated January 29, 1992]

IN THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 86-1840

JIMMY WAYNE JEFFERS,	)	
	)	
Petitioner-Appellant,	)	ON APPEAL FROM THE
	)	UNITED STATES DISTRICT
-vs-	)	COURT FOR THE DISTRICT
	)	OF ARIZONA
SAMUEL A. LEWIS, et al.,	)	NO. CIV-85-945-TUC-ACM
	)	
Respondents-Appellees.	)	REQUEST FOR RULING
	)	

Respondents submit the following Request for Ruling.

DATED this 29th day of January, 1992.

Respectfully submitted,

GRANT WOODS
Attorney General

/S/

PAUL J. McMURDIE
Chief Counsel

Attorneys for RESPONDENTS-APPELLEES

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner-appellant, a death row inmate in the Arizona State State Prison, filed a petition for writ of habeas corpus in the United States District Court in December 1983. (CR 1.) On February 4, 1986, the district court dismissed the petition. Jeffers v. Ricketts, 627 F. Supp. 1334 (D. Ariz. 1986). In his opening brief in this Court, petitioner raised five claims that his convictions were improper, and eight claims that his death sentence was improperly imposed. On November 9, 1987, a three-member panel of this Court rejected all of petitioner's attacks on his conviction. Jeffers v. Ricketts, 832 F.2d 476, 479-81 (9th Cir. 1987). The panel also rejected petitioner's claim that he was denied an impartial sentencing tribunal. Id. at 481-82. Two members of the panel, however, vacated petitioner's death sentence on the ground that the "especially heinous or depraved" aggravating circumstance, while sufficiently narrow, could not be constitutionally applied to petitioner "without losing its ability to distinguish in a principled manner between those it condemns to death and those it does not." Id. at 482-86. The panel declined to consider petitioner's remaining sentencing-related claims, although in a footnote it stated that he was not entitled to a jury determination of aggravating and mitigating factors. Id. at 486 n.11. On April 14, 1989, this Court denied the state's motion for rehearing and suggestion for rehearing en banc.

The state then filed a petition for writ of certiorari asking the United States Supreme Court to review this Court's decision that the "especially heinous or depraved" aggravating circumstance could not be constitutionally applied to petitioner. On October 10, 1989, the Supreme Court granted the petition. On June 27, 1990, the Supreme Court concluded that the state supreme court had adopted a sufficiently narrow

construction of the "especially heinous or depraved" circumstance, and that the circumstance was constitutionally applied in petitioner's case. Lewis v. Jeffers, __ U.S. __, 110 S. Ct. 3092, 111 L. Ed. 2d 606 (1990). The Supreme Court vacated this Court's judgment and remanded for proceedings consistent with its opinion. Id. On October 1, 1990, this Court invited supplemental briefs on the sentencing-related claims petitioner had previously raised in this Court that were not resolved by this Court's decision nor by the Supreme Court's decision. On January 28, 1991, the state submitted its supplemental answering brief per this Court's order. On July 24, 1991, this Court heard oral argument on the remaining claims.

It has now been 6 months since the matter was submitted to the Court. Respondents-appellees would note for the Court that it has been over 9 years since petitioner originally filed his petition for writ of habeas corpus in the United States District Court. It has been over 18 months since the United States Supreme Court remanded the case to this Court for proceedings consistent with the high court's opinion. Respondents believe that further delay is unwarranted and that this Court should issue its opinion.

In re Blodgett, 1992 U.S. Lexis 193 (U.S., Jan. 13, 1992), the United States Supreme Court held:

> In a capital case the grant of a stay of execution directed to a State by a federal court imposes on that court the concomitant duty to take all steps necessary to ensure a prompt resolution of the matter, consistent with its duty to give full and fair consideration to all of the issues presented in the case.

Id. at 6-7 (emphasis added). Given the extreme length of time petitioner-appellant's case has been pending in the federal system, the state

believes that the federal courts have failed in their "concomitant duty to take all steps necessary to ensure a prompt resolution of the matter." In re Blodgett, at 6. The state further believes that the 6 months in which this Court has had to decide the remaining few issues in this case is more than sufficient to exercise its "duty to give full and fair consideration to all of the issues." Id. at 7. The state believes any additional delay is a violation of the comity that exists between the federal and the state systems. Therefore, the State of Arizona respectfully requests that this Court exercise all due diligence and render its opinion.

DATED this 29th day of January, 1992.

Respectfully submitted,

GRANT WOODS
Attorney General

/S/

PAUL J. McMURDIE
Chief Counsel

Attorneys for RESPONDENTS-APPELLEES

CERTIFICATE OF SERVICE

TWO COPIES of this Motion have been deposited for mailing this 29th day of January, 1992, to:

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